

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION**

Case No. 7:14-CV-00157-FL

CTB, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
HOG SLAT, INCORPORATED,)	
)	
Defendant.)	

**NOTICE OF SUBSEQUENTLY DECIDED
CONTROLLING AUTHORITY**

Pursuant to Local Rule 7.1(h), Hog Slat, Inc. (“Hog Slat”) submits this notice of subsequently decided authority related to Hog Slat’s pending Motion for Summary Judgment (D.E. 118), and in opposition to Plaintiff CTB, Inc.’s pending Motion for Summary Judgment (D.E. 115):

In re General Mills IP Holdings II, LLC, 124 U.S.P.Q.2d 1016, 2017 WL 4082590 (T.T.A.B. Aug. 22, 2017) (Precedential) (affirming Trademark Examining Attorney’s refusal to register “the color yellow appearing as the predominate uniform background color on product packaging,” finding a lack of distinctiveness in view of concurrent use of same color by competitors) attached hereto as **Exhibit A**;

Poly-Am., L.P. v. Illinois Tool Works, Inc., 124 U.S.P.Q.2d 1508, 2017 WL 4687981, at *6-*15 (T.T.A.B. Oct. 18, 2017) (Precedential) (cancelling trade dress registration on functionality grounds in view of Registrant’s utility patent disclosing functional nature of claimed trade dress) attached hereto as **Exhibit B**.

Dated: May 23, 2018

Respectfully submitted,

WILLIAMS MULLEN

/s/ Andrew R. Shores

Robert C. Van Arnam (N.C. Bar No. 28838)

Andrew R. Shores (N.C. Bar No. 46600)

P.O. Box 1000

Raleigh, NC 27602-1000

Telephone: (919) 981-4000

Fax: (919) 981-4300

rvanarnam@williamsmullen.com

ashores@williamsmullen.com

Counsel for Defendant Hog Slat, Incorporated

CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of electronic filing to the following counsel of record for the Plaintiff:

David J. Marr (Ill. Bar No. 6194750)
Eric Dorkin (Ill. Bar No. 6256390)
CLARK HILL PLLC
130 E. Randolph Street, Suite 3900
Chicago, Illinois 60601
dmarr@clarkhill.com
edorkin@clarkhill.com

Christopher B. Clare (NC Bar No. 39582)
601 Pennsylvania Avenue NW
North Building, Suite 1000
Washington, D.C. 20004
cclare@clarkhill.com
Local Civil Rule 83.1 Counsel

Counsel for Plaintiff CTB Inc.

WILLIAMS MULLEN

By: /s/ Andrew R. Shores
Robert C. Van Arnam
N.C. State Bar No. 28838
Andrew R. Shores
N.C. State Bar No. 46600
P.O. Box 1000
Raleigh, NC 27602-1000
Telephone: (919) 981-4000
Fax: (919) 981-4300
rvanarnam@williamsmullen.com
ashores@williamsmullen.com

Attorneys for Defendant Hog Slat, Incorporated